

FOOD SAFETY ENFORCEMENT POLICY

Carlisle City Council

Regulatory Services

March 2022

1.0 POLICY STATEMENT

- 1.1 Carlisle City Council aims to ensure that food and drink intended for human consumption, that is produced, stored, distributed, handled or sold within the Council's area, is without risk to the health or safety of the consumer. In carrying out its Food Law enforcement the City Council will encourage food businesses and regulated bodies to comply with their food safety obligations and grow as businesses.
- 1.2 This Policy has been written having regard to the Food Standards Agency's Framework Agreement and Regulators Code 2014. Officers will therefore have regard to and implement the principles of proportionality, consistency, transparency and targeting.
- 1.3 Inspections of food businesses and other food safety activities will be in accordance with legislation, statutory Codes of Practice and guidance issued by the Food Standards Agency and the Central Government Departments, such as the Department for Environment, Food & Rural Affairs and Department for Business, Energy and Industrial Strategy (BEIS).
- 1.4 The Council fully acknowledges and endorses the rights of individuals and will ensure that all enforcement action is in strict accordance with the Human Rights Act 1998, the Regulation of Investigatory Powers Act 2000 and the Police and Criminal Evidence Act 1984 (as amended).
- 1.5 The Council recognises that the particular interests of different consumers within its area will need to be taken account of to ensure that legislation is enforced fairly and consistently. Interpreters will be used where there is difficulty in understanding the English language. Where possible, translated advisory leaflets will be made available. Any visits that are required out of hours will be undertaken as necessary.
- 1.6 We are fully committed to the Home Authority Principle and the Primary Authority Scheme* and will utilise the principle whenever enforcement activity is considered, especially where the issue has national implications. We will have full regard to the BEIS Primary Authority Statutory Guidance.

*The Home Authority Principle and the Primary Authority Scheme are supported by food and trading standards services throughout the UK. The Primary Authority Scheme has been made under The Regulatory Enforcement & Sanctions Act 2008. A local authority acting as a home or originating authority will place special emphasis on the legality of goods and services originating within its area. It aims to prevent infringements by offering advice and guidance at source in order to maintain high standards of public protection at minimum cost. The Home Authority is the authority where the relevant decision making base of an enterprise is located. The Originating Authority is an authority in whose decentralized enterprise produces goods and services.

- 1.7 All enforcement action will be based on the risk to health and in accordance with this policy. Any departure from this policy must be justified to the appropriate line manager with delegated authority under the Council's constitution. The reasons for any departure will be fully documented and a copy retained on the premises file.
- 1.8 This Policy supports service delivery and intervention plans and procedures, and it will be actively brought to the attention of all relevant staff. The policy is supported in certain areas by additional procedural guidance. A copy of this policy will be made available at Council offices and to any person that requests one. The Policy will also be made available on the Council's website.
- 1.9 This Policy has been agreed by members and will be reviewed at least every 3 years. Any substantive changes will be approved by members.

2.0 ENFORCEMENT OPTIONS

- 2.1 Authorised officers will consider the most appropriate course of action, which should be taken following inspection or investigation. These include:
- No action
 - Informal action and advice
 - Formal letter known as informal written notice
 - Statutory Notices – Hygiene Improvement Notices, Detention of Food Notices, Remedial Action Notices and Hygiene Emergency Prohibition Notices.
 - Issuing and revoking approvals including suspensions and conditional approvals
 - Prohibiting operations and processes
 - Simple caution
 - Prosecution

Where formal enforcement action is to be considered, the officer will advise the Primary Authority and Home/Lead Authority where relevant, of any actions intended and seek written agreement. Officers will refer to the Primary Authority website to establish any partnership arrangements, <https://primary-authority.beis.gov.uk/user/login>.

2.2 No Action

There will be occasions when it is appropriate to take no further action on completion of the inspection or investigation. This will be the case where the risk to health is insignificant and /or the premises, is low risk in nature i.e. no food preparation. A

report of inspection should be left on-site or sent soon after the inspection highlighting that the standards of compliance are satisfactory.

2.3 Informal Action

Informal action includes verbal advice, requesting others to act, letters containing recommendations of good hygienic practice, accepting the voluntary surrender of food and the issuing of reports of inspection in accordance with the Food Standards Agency - Food Law Code of Practice (England) (FLCOP).

Informal action will be appropriate in the following circumstances:

- (i) The act or omission is not serious enough to warrant formal action.
- (ii) From the past history, it can be reasonably expected that informal action will achieve compliance.
- (iii) The consequences of non-compliance will not pose a significant threat to food safety. Or
- (iv) The food business is operated by a voluntary organization and information is likely to be more helpful and effective than a formal approach.

Verbal advice will be offered where practices do not constitute a breach of the legislation or where advice on good practice, for example within industry guides, good manufacturing practice (GMP) or trade association guidance, has not been followed. Officers providing verbal advice will ensure that they clearly differentiate between those items that are legal requirements and those that are recommendations of good practice.

Verbal advice will be confirmed in writing. This may form part of the Report of Inspection, which is normally left at the end of the visit or sent afterwards.

2.4 Formal letters

Formal letters will be considered appropriate in the following circumstances:

- Where the act or omission is not serious enough to warrant the service of a statutory notice;
- The history or track record of the individual or company means that it can be reasonably expected that a formal letter will achieve compliance;
- The consequences of non-compliance will not pose a significant threat to food safety; or
- The food business is operated by a voluntary organization and a formal letter is likely to be more helpful and effective than statutory notices or legal proceedings.

- If the food business is non-compliant

Any formal letters shall be written in accordance with the Food Standards Agency FLCOP and practical guidance. They will contain all the information necessary to understand what work is required and why it is necessary. They will indicate the Regulations contravened and the measures, which will enable compliance.

Letters will clearly differentiate between matters, which are necessary to meet statutory requirements and those which are recommendations.

The opportunity to discuss the contents of the letter with the officer and/or the Principal Health & Housing Officer will be made available and both contact details will be clearly visible in the letter.

Letters should be sent to the food business operator within a target date maximum of 10 working days from the inspection/visit.

2.5 Statutory Notices

In certain circumstances, the service of a statutory notice will be appropriate. A range of notices may be used:

- Hygiene Improvement Notices
- Hygiene Emergency Prohibition Notices
- Detention and Condemnation of Food Notices
- Remedial Action Notices
- Warrants to enter premises
- PACE Code B Notices
- Other relevant notices under current Official Food and Feed Regulations, and the Products of Animal Origin Regulations.

(i) Hygiene Improvement Notices

The following factors determine the use of Hygiene Improvement Notices in accordance with the FLCOP.

- a. There are significant contraventions of legislation
- b. There is a lack of confidence that the food business operator or company will respond to an informal approach
- c. There is a history of non-compliance with informal action or formal letters, history of poor risk scores and award scheme ratings
- d. Standards are generally poor with little management awareness of statutory requirements

- e. The consequences of non-compliance could be potentially serious to public health
- f. Effective action needs to be taken as quickly as possible to remedy conditions, which are serious, or deteriorating, even though it is intended to prosecute.

The use of Hygiene Improvement Notices will be related to risk to health and they will not be used for minor contraventions of the legislation. They will not be used where the contraventions might be a continuing one or in transient situations i.e. personal cleanliness of staff or one day festival or sporting event.

Officers issuing Hygiene Improvement Notices will discuss with the food business operator the works to be undertaken and realistic time limits for the completion of the works. The officer will consider alternative solutions of equal effect put forward by the food business operator.

The authorised officer will check compliance as soon as practicable after notification that the work has been completed or at the latest, the day following the expiry of the notice. The authorised officer will confirm in writing that the works have been satisfactorily completed.

Failure to comply with a Hygiene Improvement Notice will result in the instigation of legal proceedings in the majority of cases.

The officer will consider all reasonable written requests for an extension of time of the notice where these are made within the existing time scale.

(ii) Hygiene Emergency Prohibition Notices

The use of Hygiene Emergency Prohibition Notices will be deemed appropriate where there is an imminent risk of injury to health and where for example, the circumstances outlined in the Food Standards Agency FLCOP (England) and practical guidance are fulfilled. Examples are as follows:

Health risk conditions where prohibition of premises may be appropriate:

- Infestation by rats, mice, cockroaches, birds or other vermin, serious enough to result in the actual contamination of food or a significant risk of contamination.
- Very poor structural condition and poor equipment and/or poor maintenance or routine cleaning and/or serious accumulations of refuse, filth or other extraneous matter, resulting in the actual contamination of food or a significant risk of food contamination.

- Drainage defects or flooding of the establishment, serious enough to result in the actual contamination of food, or a significant risk of food contamination
- Premises or practices which seriously contravene food law and have been, or are implicated, in an outbreak of food poisoning.
- Any combination of the above, or the cumulative effect of contraventions which, taken together, represent the fulfilment of the health risk condition.

Health conditions where the prohibition of equipment may be appropriate:

- Use of equipment for the processing of high-risk foods that has been inadequately cleaned or disinfected or which is grossly contaminated and can no longer be properly cleaned.
- Dual use of complex equipment, such as vacuum packers, slicers and mincers for raw and ready-to-eat foods.
- Use of storage facilities or transport vehicles for primary produce where the storage facilities or transport vehicles have been inadequately cleaned or disinfected.

Health risk conditions where prohibition of a process may be appropriate:

- Serious risk of cross contamination.
- Failure to achieve sufficiently high processing temperatures
- Operation outside critical control criteria, for example, incorrect pH of a product which may allow *Clostridium botulinum* to multiply.
- The use of a process for a product for which it is inappropriate.

(iii) Detention and Condemnation of Food Notices

Authorised officers will use powers to inspect, detain, seize and arrange for the condemnation of food if they have reasonable grounds that the food does not comply with the food safety requirements as prescribed in the in the Food Safety and Hygiene (England) Regulations 2013, Food Safety Act 1990 and Article 14 of EC Regulation 178/2002.

The procedure for detaining, seizing and arranging for the condemnation of food will be in accordance with FLCOP (England) and Practical Guidance.

A person in charge of food that has been detained or seized for the purposes of condemnation by a Magistrate may be eligible for compensation if:

- The detention of food notice is withdrawn; or
- The magistrate fails to condemn the food; and
- The food has deteriorated in value resulting from the action.

(iv) Remedial Action Notices (RANS)

It is only appropriate to use these notices for requiring works in food premises approved under EC Regulation 853/2004. A documented procedure covers use of these notices and this must be followed.

(iv) Warrants to Enter Premises

The Council will apply to the Magistrates Court for a warrant to enter premises if:

- Necessary entry is required at an unreasonable time; and/or
- Entry to a premises is refused; and/or
- Entry is expected to be refused; and/or
- The premises are vacant and entry is required.

(v) PACE Code B Notices

Notices will be served where it is necessary to search premises to investigate an alleged offence. This is only appropriate in circumstances where Officers have serious grounds for suspecting an offence has already been committed before they visit the premises or act on information provided by another agency. The procedure on service of Code B notices must be referred to by Officers and legal advice sought before use.

2.6 Legal Proceedings – Simple cautions and Prosecutions

Carlisle City Council will consider instigating legal proceedings where there is admissible, substantive and reliable evidence that an identifiable person or company has committed an offence and there is a realistic prospect of conviction. The following circumstances may warrant the institution of legal proceedings:

- The offence involves flagrant breaches of the law, such that public health, safety or well-being is put at risk;
- The offence involves a failure to correct an identified potential risk to food safety arising from the processing, cooking, handling or storage of food, having given the offender a reasonable opportunity to comply with the lawful requirements of an authorised officer;
- The offence involves a failure to comply in full or in part with the requirements of a statutory notice;
- Offences have resulted in the service of a Hygiene Prohibition Notice;
- There is a history of similar offences related to risks to the safety of food.

In deciding whether legal proceedings should be taken, Officers should complete the matrix in Appendix I (matrix to determine informal or formal action) and document their decision with the involvement of the appropriate line manager. Once the officer is of the opinion that legal proceedings may be instigated, the case is considered in the light of the following factors:

- a. The seriousness of the offence:
 - The risk to public health
 - The number of identifiable victims
 - Failure to comply with a statutory notice served for a significant breach of legislation
 - Disregard for the public health for financial reward

- b. The previous history of the food business operator or company:
 - The offences follow a previous history of similar offences
 - Failure to respond positively to past written notices and warnings
 - Failure to comply with statutory notices

- c. The likelihood of the defendant being able to establish a due diligence defence:
 - Practical steps taken or due diligence defence available but there is doubt about its legal validity
 - Practical steps taken but there is doubt that the due diligence defence has been achieved
 - Practical steps have been taken that are not totally effective, therefore due diligence has not been proved
 - No practical step taken, therefore there is no possibility of proving due diligence

- d. The ability of witnesses and their willingness to co-operate:
 - Witnesses would rather not be involved in prosecution but might be willing if encouraged
 - Witness would require summons to attend
 - Witness would be willing to attend court but may not be effective under cross examination
 - Witness would be willing to attend and will be effective

- e. The willingness of the food business operator or company concerned to prevent a recurrence of the problem:
- Steps have been taken to prevent a recurrence and there is confidence that these will be effective
 - Steps have been taken to prevent a recurrence but there are doubts that these will be effective
 - Steps to prevent a recurrence have been promised but confidence is low that the promises will be fulfilled
 - The food business operator or company are not willing to prevent a recurrence and there is no confidence that the food business operator is capable of preventing a recurrence
- f. The public benefit and interest of a prosecution and the importance of the case for:
- The likely penalty upon conviction
 - The offender's age and state of health
 - The offender's attitude to the offence
 - Whether it might establish a legal precedent
- g. Any explanation offered by the food business operator or the company:
- Explanation is satisfactory, factors appear to be beyond the control of the defendant
 - Explanation shows that prevention was possible but necessary steps had not been taken
 - Explanation poor, blatant failure to control circumstances leading to offence
 - No explanation offered, wilful disregard for public health

Authorised officers must complete the matrix in Appendix III (decision whether to prosecute or issue a simple caution) when any of the circumstances outlined in Appendix II are encountered.

Types of Legal Proceedings

On completion of the matrix in Appendix I, and II, and where formal action is considered to be necessary, legal proceedings may take the form of either a simple caution or a prosecution. The officer, the appropriate line manager, and a legal representative should agree the final decision. On completion of the determination matrix, the officer(s) should follow the standard forms to instruct legal to consider the

case with a summary of the facts and initial information. If a PACE interview has occurred as part of the initial decision making process, a transcript should be given to legal along with the initial information. An update on legal opinion should be sought within 2 weeks of this instruction.

Simple Cautions

The Council will offer simple cautions as an alternative to prosecutions in order to:

- Deal quickly and simply with less serious offences
- To divert less serious offences away from the Courts and
- To reduce the chances of repeat offences

The Council will only make the offer of a simple caution where:

- There is sufficient evidence of the offender's guilt for a realistic prospect of conviction
- The offender admits the offence and
- The offender clearly understands the significance of a simple caution and gives informed consent to being cautioned.

Where a food business operator declines the offer of a simple caution, the Council will proceed with a prosecution.

3.0 DECISION MAKING AND AUTHORISATION

3.1 All Officers who undertake the enforcement options in this policy will have the necessary qualifications, training, experience and competence to do so. All actions will be in accordance with the Food Standards Agency FLCOP (England).

All officers will be issued with a formal written record of their authorisation, signed by either the Director of Governance and Regulatory Services or the Regulatory Services Manager. Officers will also be issued with an "Authority to Enter" card with a summary of their available powers of entry.

The enforcement options and levels of authorisation are outlined in Appendix IV.

4.0 WORKING WITH OTHERS TO SECURE COMPLIANCE

Officers will work closely with others to secure compliance with food safety legislation. Discussion and liaison may be necessary with the following:

➤ **Consumers and businesses**

The views of our stakeholders are essential in obtaining effective compliance with the legislation. The need to protect the health of the consumer whilst acknowledging the concerns of businesses are recognised and are implicit within this policy and the requirements of the Regulators Code.

➤ **Food Standards Agency**

The FSA will be notified of all approvals or any variations issued under product-specific legislation. Under the Food Alert system, the FSA will be notified of any issues, which have a wider concern or where there is a serious localised incident.

➤ **Primary Authority Scheme/Home Authority**

If the premises under inspection or investigation are linked to a Primary, Home or Originating Authority, when officers are considering formal action, they will liaise with the identified authority. Where there is an imminent risk to health, action will be taken immediately and the relevant authority will be notified at the earliest available opportunity.

➤ **Public Health Information**

Infection control advice and epidemiological support will be requested as necessary.

➤ **UK Health Security Agency (UKHSA) and County Analyst**

The expert advice of colleagues within UKHSA and the County Analyst may be required in determining the relevant enforcement option.

5.0 Complaints

Carlisle City Council has an effective complaints procedure and will endeavour to resolve any complaint as quickly as possible. complaints about the service can either be made direct to the Regulatory Services Manager by:

Email – EnvironmentalHealth@carlisle.gov.uk or

Or through the City Council's official complaints procedure:

Telephone – 01228 817000

In writing – Carlisle City Council, Civic Centre, Carlisle, CA3 8QG

Email – complaints@carlisle.gov.uk

MATRIX TO DETERMINE LEGAL PROCEEDINGS OR INFORMAL ACTION

CRITERION	SCORE	WTG	TOTAL
Risk to health			
No risk to health	1	5	
Risk to health possible but unlikely	2	5	
Caused minor ill health, potential for more serious effect in more vulnerable groups	3	5	
Identified or potential serious medical effect	4	5	
Previous history			
Reacted to previous advice, change usually effective	1	4	
Reacts to advice, change not always effective, moderate confidence in management	2	4	
Compliance with previous advice patchy, low confidence in management	3	4	
Failure to respond to previous advice	4	4	
Likelihood of being able to prove due diligence			
Practical steps taken, due diligence possible, some doubt	1	5	
Practical steps taken, but doubt about due diligence	2	5	
Practical steps taken are not totally effective, no due diligence	3	5	
No possibility of proving due diligence	4	5	
Ability of witnesses			
Witness would require summons to attend	1	1	
Witness would rather not attend court but might be persuaded	2	1	
Witness willing to attend but may not be effective under cross examination	3	1	
Witness willing to attend and will be effective	4	1	
Willingness to prevent a recurrence			
Steps taken to prevent a recurrence, confidence that these will be effective	1	2	
Steps taken to prevent recurrence, doubts that these will be effective	2	2	

Steps promised to prevent recurrence, but confidence is low that promise will be fulfilled	3	2	
Not willing to prevent recurrence, no confidence that food business operator is capable of preventing recurrence	4	2	
Probable public benefit			
Publicity is likely to embarrass Council	1	1	
Penalty/publicity will have limited value	2	1	
Penalty/publicity will ensure improvement in the case in question	3	1	
Penalty/publicity will prevent other similar offences	4	1	
Explanation offered by defendant			
Explanation satisfactory, factors appear to have been beyond defendant's control	1	3	
Explanation shows that prevention was possible but that necessary steps had not been taken	2	3	
Explanation poor, blatant failure to control circumstances leading to offence	3	3	
No explanation offered, willful disregard for public health	4	3	

NOTES

The weighting is to be used as a multiplier. A separate assessment should be completed for each offence and each food business operator. In many cases the investigating officer may be the only witness and this section should be scored accordingly.

A decision of informal action will follow where the score is between 0 and 34. A decision of formal action will normally follow where the score is between 35 and 84

RECOMMENDATION OF INVESTIGATING OFFICER/PHHO

INFORMAL ACTION / FORMAL LEGAL PROCEEDINGS

Signed:

Date:

REGULATORY SERVICES MANAGER

AGREE/DISAGREE

Signed:

Date:

DECISION OF LEGAL REPRESENTATIVE

Comments:

Signed:

Date:

Criteria leading to Formal Legal Proceedings

Where any one of the following circumstances apply, officers must complete the matrix in Appendix III, where a decision will be made as to whether a simple caution will be offered or the offender will be prosecuted.

1. Premises confirmed to be associated with an outbreak of food poisoning, which resulted in serious illness and/or death.
2. Repeated breaches giving rise to significant risk, or persistent and significant poor compliance.
3. Management of food safety is poor and gives rise to significant risk.
4. Following the service of a Hygiene Emergency Prohibition Notice/Order.
5. Following the voluntary closure of premises.
6. Repetition of breach that was subject to Simple Caution.
7. False information supplied wilfully, intent to deceive in relation to a matter giving rise to significant risk.
8. Obstruction of an officer.
9. Formal action is required as a means of drawing attention to the need for compliance with the law and to act as a deterrent to others.

INITIAL DECISION WHETHER TO PROSECUTE OR ISSUE A SIMPLE CAUTION

Evidential Test: Do we have sufficient evidence to provide a ‘realistic prospect of conviction’ Yes / No

CRITERION	PROSECUTE	OFFER CAUTION
Is the offence serious?	Yes	No
Has the offender a previous history of offending?	Yes	No/Unknown
Is the offender willing to prevent a recurrence of the problem?	No	Yes
Would a prosecution be in the public interest?	Yes	No
Is the case likely to establish a legal precedent?	Yes	No
Has the offender offered a reasonable explanation?	No	Yes
TOTAL		

Note

Ring the appropriate response to each criterion and then total the number of rings in each column. The decision will be based on the total number of rings

RECOMMENDATION OF INVESTIGATING OFFICER/PHHO

PROCEED WITH PROSECUTION OR SIMPLE CAUTION

Signed:

Date:

DECISION OF REGULATORY SERVICES MANAGER

AGREE/DISAGREE

Signed:

Date:

DECISION OF LEGAL REPRESENTATIVE

Comments:

Signed:

Date:

APPENDIX IV

DECISION MAKING AREA	OFFICERS AUTHORISED TO ACT	OFFICERS WHO MUST BE CONSULTED
Informal action and formal letters	Technical Assistants Environmental Health Officers Principal Health & Housing Officer Regulatory Services Manager Director of Governance and Regulatory Services	Principal Health & Housing Officer – to monitor and audit periodically
Hygiene Improvement Notices	Environmental Health Officers Principal Health & Housing Officer	Environmental Health Officers Principal Health & Housing Officer
Hygiene Emergency Prohibition Notices	Environmental Health Officers Principal Health & Housing Officer	Principal Health & Housing Officer Regulatory Services Manager Legal representative
Simple/ 'Formal' Caution	Environmental Health Officers Principal Health & Housing Officer Regulatory Services Manager	Principal Health & Housing Officer Regulatory Services Manager Legal representative
Prosecution	Environmental Health Officers Principal Health & Housing Officer Regulatory Services Manager	Principal Health & Housing Officer Regulatory Services Manager Legal representative